

Petitioner

M/s. Vyeth Limited.

Respondent

Ms. Tawade i/b M/s. M. V. Kini & Co. for petitioner.

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CORAM : S. C. DHARMADHIKARI, J.

DATE : MARCH 16, 2006.

1. Heard Ms. Tawade, advocate appearing for the petitioner and Mr. Kapadia appearing for the respondent company. Perused the petition, annexures thereto and the affidavit in reply, filed by the company.

2. The company had awarded a contract to the petitioner through the consultants, M/s. Dalal Consultants and Engineers Limited for installation of air-conditioning and cooling plant on their behalf at Goa. The work was of Rs. 1,35,00,000/-. The case set up in the petition is that pursuance to this certificate of the Engineers & Consultants, the respondents have paid to the petitioner a sum of Rs.1,22,41,720/- and amount of Rs. 27,13,080.95 is payable. However, reliance is then placed upon the final certification of the Consultants and the claim

according to petitioner is Rs. 5,75,426/-. It is this amount which is not paid and therefore, statutory notice was addressed.

3. In reply to the statutory notice, the respondent through its advocate points out that the final certification by the Consultants includes a recommendation for penalty to the tune of Rs.7,238,384 and therefore the claim of the petitioner is denied.

4. In the affidavit in reply filed on behalf of the company, it is pointed out that no case is made up out for winding up, additionally it is alleged that petitioners have suppressed material facts including certificate of the Consultants and Engineers dated 10th August, 2002 and copy of which is annexed to the affidavit in reply. The company also invites my attention to the terms and conditions which firstly stipulate an outer limit for completion of the work at site and secondly enables levy of penalty for the delay.

5. It is in these terms that certificate has been issued and it cannot be said that the action of the

respondent withholding the amount, as claimed by the petitioner, and dispute raised in that behalf lacks bona fides. A petition for winding up of the company is not an appropriate remedy, more so, for resolving disputes of this nature. The petition is dismissed.

6. It would be open for the petitioner to file a civil suit and needless to say that as and when such suit is filed, the observations as above, would not prevent either institution or prosecution thereof.

(S.C. DHARMADHIKARI, J.)